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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,606	04/22/2004	Jeffrey M. Simpson	2S14.1-031	6850
23506	7590	10/03/2007	EXAMINER	
GARDNER GROFF GREENWALD & VILLANUEVA, PC			NGUYEN, SON T	
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SUITE 800			3643	
ATLANTA, GA 30339				
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10/03/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/829,606	SIMPSON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Son T. Nguyen	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 31 January 2007.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-17 and 23-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-17 and 23-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN  
 PRIMARY EXAMINER

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)                            4) Interview Summary (PTO-413)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                            Paper No(s)/Mail Date. \_\_\_\_\_.  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 10/23/06.                            5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

### DETAILED ACTION

1. Upon further consideration, the final rejection mailed on 10/4/06 has been withdrawn in view of the following:

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. **Claims 1-11,16,17** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 1, the phrase "to present the appearance of a rattan material" it is unclear and indefinite because what really is considered the appearance, i.e. the weaving pattern, the color, the rough fibers, etc.?

All other claims are depends of claim 1, thus, are also rejected under 112.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 12-14,23,24** are rejected under 35 U.S.C. 102(b) as being anticipated by Schichtl (627535).

For claim 12, Schichtl teaches an enclosure for housing a pet litter pan in an interior portion thereof, said enclosure comprising an openable panel 11,12 having an

interior face, an exterior face, and a pair of at least two rails 12 along the interior face for sliding said litter pan thereon.

For claim 13, Schichtl teaches wherein said openable panel is pivotally mounted along a bottom edge thereof (at ref. 10).

For claim 14, Schichtl teaches a releasable latch 13-16 along a top edge thereof.

For claim 23, Schichtl teaches an enclosure for a pet litter pan comprising a pivotally opening panel 11,12 for accessing an interior portion of the enclosure, said pivotally opening panel comprising at least two rails 12 extending along an interior face thereof for sliding a litter pan thereon during insertion and removal of the litter pan from the enclosure.

For claim 24, Schichtl teaches an enclosure for a pet litter pan, the enclosure comprising a plurality of generally flat panels 11,12,8,9 assembled together, wherein the panels are attached to one another by connector feet 3,5,6,10 for engaging adjacent panels.

6. **Claims 12,15,23-25** are rejected under 35 U.S.C. 102(b) as being anticipated by Ho (5452681).

For claim 12, Ho teaches an enclosure for housing a pet litter pan in an interior portion thereof, said enclosure comprising an openable panel 4,41 having an interior face, an exterior face, and a pair of at least two rails (rails 4 of the screen) along the interior face for sliding said litter pan thereon.

For claim 15, Ho teaches wherein said openable panel comprises an opening (when open door 41) for allowing a pet to enter and exit the enclosure.

For claim 23, Ho teaches an enclosure for a pet litter pan comprising a pivotally opening panel 4,41 for accessing an interior portion of the enclosure, said pivotally opening panel comprising at least two rails (rails 4 of the screen) extending along an interior face thereof for sliding a litter pan thereon during insertion and removal of the litter pan from the enclosure.

For claim 24, Ho teaches an enclosure for a pet litter pan, the enclosure comprising a plurality of generally flat panels 4 assembled together, wherein the panels are attached to one another by connector feet 3,33B for engaging adjacent panels.

For claim 25, Ho teaches a removable catch tray 2 having notched corners 20 for receiving said connector feet.

7. **Claims 12,13,15,23-25** are rejected under 35 U.S.C. 102(b) as being anticipated by Watling (WO02/09502A1).

For claim 12, Watling teaches in figs. 2-4, an enclosure for housing a pet litter pan in an interior portion thereof, said enclosure comprising an openable panel 28,41 having an interior face, an exterior face, and a pair of at least two rails 29,30,42,44 along the interior face for sliding said litter pan thereon.

For claim 13, Watling teaches wherein said openable panel is pivotally mounted along a bottom edge thereof. Page 7, lines 18-19.

For claim 15, Watling teaches wherein said openable panel comprises an opening (when open door 41) for allowing a pet to enter and exit the enclosure.

For claim 23, Watling teaches in figs. 2-4, an enclosure for a pet litter pan comprising a pivotally opening panel 28,41 for accessing an interior portion of the

enclosure, said pivotally opening panel comprising at least two rails 29,30,42,44 extending along an interior face thereof for sliding a litter pan thereon during insertion and removal of the litter pan from the enclosure.

For claim 24, Watling teaches in figs. 2-4, an enclosure for a pet litter pan, the enclosure comprising a plurality of generally flat panels 28,41,27,29,24,23,21 assembled together, wherein the panels are attached to one another by connector feet 45,22,25 for engaging adjacent panels. See also fig. 3.

For claim 25, Watling teaches a removable catch tray 51 having notched corners 52,53 for receiving said connector feet 45.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 1-11,16,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Watling (as above) in view of Davis (4803951).

For claim 1, Watling teaches in figs. 2-4, an enclosure for a pet litter pan comprising: a substantially rigid frame 29,22,25,38 bounding an interior space for receiving a litter pan 51; a plastic stranded material (page 7, line 6) woven onto said frame to present the appearance of a rattan material; and at least one opening (when door 41 is opened) through the stranded material and the frame for permitting pet

access to the interior space. However, Watling is silent about the plastic material being moisture resistant.

Davis teaches in the same field of endeavor of animal enclosure in which Davis employ a moisture-resistant woven plastic material (col. 5, lines 63-68) attached to a frame 38 to provide an enclosure for a pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ moisture-resistance characteristic as taught by Davis in the plastic material of Watling, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

For claim 2, Watling as modified by Davis (emphasis on Watling) further teaches a plurality of generally flat panels 28,41,27,29,24,23,21 assembled together.

For claim 3, Watling as modified by Davis (emphasis on Watling) further wherein the plurality of panels are assembled in a box-like structure. See fig. 2, self explanatory.

For claim 4, Watling as modified by Davis (emphasis on Watling) further teaches wherein the box-like structure has an open bottom (when the tray 51 is removed or pulled out as shown in fig. 2).

For claim 5, Watling as modified by Davis (emphasis on Watling) further teaches wherein the panels are attached to one another by at least one pin 31,33,32 and ferrule coupling 22,37,45.

For claim 6, Watling as modified by Davis (emphasis on Watling) further teaches wherein the panels are attached to one another by at least one connector foot 45,22,25

for supporting the enclosure on a floor and for engaging cooperating posts of the panels. However, Watling as modified by Davis is silent about the connector foot being a resilient block. It would have been an obvious substitution of functional equivalent to substitute the connector foot of Watling as modified by Davis with a resilient block, since a simple substitution of one known element for another would obtain predictable results.

KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 7, Watling as modified by Davis (emphasis on Watling) further teaches a catch tray 51 for resting a litter pan thereon.

For claim 8, Watling as modified by Davis (emphasis on Watling) further teaches a removable catch tray 51 having at least one notched corner 52,53 for engagement with one of said at least one connector foot 45. See also fig. 3.

For claim 9, Watling as modified by Davis (emphasis on Watling) further teaches a pivotally opening front panel 28,41 for accessing an interior portion of the enclosure.

For claim 10, Watling as modified by Davis (emphasis on Watling) further teaches wherein the front panel comprises at least one rail 29,30,42,44 along an interior face thereof for sliding a litter pan thereon.

For claim 11, Watling as modified by Davis (emphasis on Watling) further teaches a latch 48 mounted on an interior face of the enclosure for locking the front panel in a closed position. See also page 7, lines 18-19 for reversal pivot of panel 28,41.

For claim 16, Watling as modified by Davis (emphasis on Watling) further teaches a top panel 21 having first and second side edges and a rear edge, each of the first and second side edges and rear edge comprising at least one ferrule 22,45, said enclosure further comprising first and second side panels 23,24 and a rear panel 27, each of said first and second side panels and said rear panel comprising pins 31,32 for engagement within said ferrules of the top panel to secure the side and rear panels to the top panel.

For claim 17, Watling as modified by Davis (emphasis on Watling) further teaches wherein the rear panel extends across substantially the entire width of the enclosure, whereby when assembled, the first and second side panels are held captive against the rear panel (if the user do not wishes to remove the side panels, then they will be held captive. Note that "whereby when assembled" is functional and intended recitation, which the side panels and rear panel of Watling as modified by Davis can be held captive with each other if the user wishes to assemble with such method or step.

However, Watling as modified by Davis is silent about wherein said pins comprise hooks with free ends pointed toward the rear panel. It would have been an obvious substitution of functional equivalent to substitute the pins 31,32 of Watling as modified by Davis with pins with hooks, since a simple substitution of one known element for another would obtain predictable results. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

***Response to Arguments***

10. Applicant's arguments with respect to claims 1-17,23-25 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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